

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. T17-0031
17304501897**

CAROL BROWN

DECISION

PER CURIAM: Before this Panel on January 31, 2018—Magistrate Kruse Weller (Chair), Judge Almeida, and Magistrate Noonan, sitting—is Carol Brown’s (Appellant) appeal from a decision of Magistrate Abbate (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-26-5, “Duty in accident resulting in damage to highway fixtures.” The Appellant appeared before this Panel *pro se*. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On July 18, 2017, Officer Kimberly DaSilva (Officer DaSilva) of the Portsmouth Police Department issued Appellant a citation for the aforementioned violation. Tr. at 6; Summons No. 17304501897. The Appellant contested the charged violation, and the matter proceeded to trial on October 27, 2017. (Tr. at 1.)

At trial, Officer DaSilva was the first witness to testify. *Id.* at 6. Officer DaSilva testified that on July 18, 2017, she “was dispatched to the intersection of Bristol Ferry Road and the Mount Hope Bridge for the report of a vehicle that had driven up a curb on the median and struck a sign, [and] continued driving.” *Id.* She was notified by dispatch that a caller reported

that the suspect's vehicle, an older-model red pickup truck, had hit a large green sign and continued traveling onto Bristol Ferry Road. *Id.*

As Officer DaSilva was traveling on West Main Road towards the scene of the reported accident, she observed a red pickup truck— matching the dispatched description of the suspect's vehicle—driving in the opposite direction. *Id.* After passing the pickup truck, a motorist traveling behind the truck, pointed to the vehicle “as if he knew what [Officer DaSilva] was looking for.” *Id.* Officer DaSilva then turned around and conducted a traffic stop of the pickup truck, which was operated by Appellant. *Id.* at 7.

During the stop, Officer DaSilva “advised [Appellant] of the reason [for] the stop, asked [Appellant] if she was okay, asked [Appellant] if she had anything to drink . . . [and] [a]sked [Appellant] if she hit a sign.” *Id.* Appellant responded that she did not have anything to drink, and that she did not hit a sign. *Id.*

Despite Appellant's response, Officer DaSilva issued her a citation for damaging a highway fixture. *Id.* Officer DaSilva explained that she issued Appellant the citation “[b]ased on the damage to the front bumper of [Appellant's] vehicle that seemed to be fresh damage, as well as the vehicle that was behind [Appellant] pointing towards [Appellant's] vehicle, and the fact that her vehicle matched a description called in by one of the witnesses” *Id.* Officer DaSilva admitted a photograph of the damaged sign into evidence. *Id.* at 8-9

Detective Lee Trott (Detective Trott) of the Portsmouth Police Department also testified at trial. *Id.* at 10. Detective Trott indicated that he “was dispatched along with Officer DaSilva . . . to look for the suspect vehicle.” *Id.* at 11. After Detective Trott learned that Officer Silva had made contact with the operator of the suspect vehicle, Detective Trott went to locate the damaged sign. *Id.* Detective Trott eventually located and photographed the sign. *Id.*

The next witness to testify at trial was Sean Carroll (Mr. Carroll), who reported the accident to the Portsmouth Police Department. *Id.* at 12. Mr. Carroll testified that he was traveling “onto the Mt. Hope Bridge via Bristol Ferry Road when [he] noticed a vehicle . . . taking a left instead of going straight or [] right which is indicated by a sign on that road.” *Id.* Mr. Carroll further stated that the vehicle “[t]ook a left and jumped over the median, struck the sign and then proceeded to accelerate over the median and go down . . . Bristol Ferry Road in the right-hand lane.” *Id.* at 12-13. After seeing this, Mr. Carroll pulled over and contacted the Portsmouth Police Department. *Id.* at 13.

The Appellant was the final witness to testify at trial. *See id.* The Appellant submitted a notarized statement from her neighbor that offered insight as to how the damage to Appellant’s front bumper occurred. *Id.* at 13-14. The Appellant testified that “[she] did not hit the sign[,]” and that the sign “was [never] brought up [by Officer DaSilva].” *Id.* at 15. She added that there were “no vehicles behind [her][,]” and that “[Officer DaSilva] followed [her] for quite a distance and then . . . pulled [her] over.” *Id.*

After hearing all of the evidence, the Trial Magistrate found that Officer DaSilva, Detective Trott, and the independent witness, Mr. Carroll, testified credibly. *Id.* Based on the witnesses’ testimony, the Trial Magistrate concluded “that [Appellant] did strike [the sign, which] was depicted in the photograph that was presented by Officer DaSilva and taken by [Detective] Trott.” *Id.* As a result, the Trial Magistrate sustained the violation. *Id.* at 18.

Thereafter, Appellant filed a timely appeal of the Trial Magistrate’s decision. Forthwith is this Panel’s decision.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record

or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant contends that the Trial Magistrate’s decision was ‘clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record’ and a ‘clearly unwarranted abuse of discretion.’ § 31-41.1-8(f)(5)-(6). Specifically, Appellant argues that (1) the summons did not provide sufficient notice, as it did not indicate the fine to be imposed; (2) the Trial Magistrate erred by not considering the notarized letter from Appellant’s neighbor; (3) the call to Portsmouth police was hearsay and could not be used to identify Appellant’s vehicle; (4) the witness who reported the accident and pointed Officer DaSilva to Appellant’s vehicle never identified Appellant as the driver of the vehicle that hit the sign; and (5) the Trial Magistrate erred in crediting the officers’ testimony. This Panel will address the issues in *seriatim*.

A

Due Process

First, Appellant asserts that the Trial Magistrate erred by finding that her due process rights were not violated. The Appellant maintains that she was provided insufficient notice of the charged violation because the summons did not indicate the amount that she would be fined for the violation.

Rule 3 of the Rhode Island Traffic Tribunal Rules of Procedure clearly states that “[a] summons which provides the defendant and the court with adequate notice of the violation being

charged shall be sufficient if the violation is charged by using the name given to the violation by statute.” Traffic Trib. R. P. 3(d). The rule further states that “[a]n error or omission in the summons shall not be grounds for a reduction in the fine owed, for dismissal of the charged violation(s), or for reversal of a conviction if the error or omission did not mislead the defendant to his or her prejudice.” *Id.* Importantly, subsection (c) provides that the summons shall note “whether the violation requires a hearing or is one which may be eligible to be paid administratively pursuant to the law. If eligible for administrative payment, the officer shall also note on the summons the full amount of the fine[s] required to be paid.” Traffic Trib. R. P. 3(c).

A review of the record reveals that the summons contained the necessary information pursuant to Rule 3. *See* Summons No. 17304501897. The summons clearly conveys the statute that Appellant is charged with violating. Additionally, the summons indicates that Appellant “may not pay by mail and MUST appear in court” at the listed time and date. *Id.* Rule 3(c) of the Traffic Tribunal Rules of Procedure clearly states that the summons need not indicate the amount of the fine to be imposed.

Therefore, this Panel finds that the summons was not defective. In light of this Panel’s finding, Appellant could not have been prejudicially misled by the summons. Accordingly, the Trial Magistrate properly found that the summons “did not mislead the defendant to [her] . . . prejudice[,]” and that Appellant’s due process rights were not violated.

B

Hearsay

The Appellant also argues that the Trial Magistrate improperly admitted hearsay testimony and subsequently relied on that testimony in his decision. Particularly, Appellant argues that the Trial Magistrate (1) erred by not considering the letter from Appellant’s neighbor

discussing the front-end damage to Appellant's vehicle; and (2) erred by finding that the witness's call to Portsmouth police reporting the accident was inadmissible hearsay and could not be used to identify her vehicle.¹

“Under Rule 801(c) of the Rhode Island Rules of Evidence, hearsay is ‘a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.’” *Powers v. Coccia*, 861 A.2d 466, 469 (R.I. 2004) (citing R.I. R. Evid. 801(c)). Our Supreme Court has stated that “[s]tatements not offered to prove the truth of what they assert are not hearsay and as such do not require the assistance of an exception to the hearsay rule in order to be admissible.” *State v. Gomes*, 764 A.2d 125, 131 (R.I. 2001) (citing *In re Jean Marie W.*, 559 A.2d 625, 629 (R.I. 1989)). Further, the Rhode Island Supreme Court has held that an officer may testify about a message received through dispatch, when “[t]he entire purpose of [the] testimony [is] to show why [an officer] apprehended [a] defendant[,] . . . because the radio message [is] not offered to prove the defendant's guilt.” *Id.* (quoting *State v. Palmigiano*, 112 R.I. 348, 359, 309 A.2d 855, 862 (1973)).

The record indicates that Appellant presented the neighbor's letter to the Trial Magistrate as evidence showing how her vehicle sustained the front-end damage. (Tr. at 13.) The Trial Magistrate stated that he would “take [the letter] into consideration and give it its proper weight.” *Id.* However, the letter constitutes inadmissible hearsay as it is an out-of-court statement offered by Appellant to prove the truth of how the vehicle's damage occurred. *Powers*, 861 A.2d at 469 (citing R.I. R. Evid. 801(c)). As such, the Trial Magistrate could not rely on the contents of the letter.

¹ The Appellant also raises the argument that she never received a copy of the police report. However, this argument is without merit as the record contains no indication that the police report was offered as evidence at trial.

Alternatively, both Officer DaSilva and Mr. Carroll testified about the call to Portsmouth police, describing the vehicle that Appellant was driving. (Tr. at 6.) The witnesses' testimony was not hearsay as it was not offered to prove Appellant's guilt. *See Gomes*, 764 A.2d at 131. Instead, the testimony was offered to establish that Officer DaSilva was on notice of the accident and the suspect vehicle's description. *Id.* (quoting *Palmigiano*, 112 R.I. at 359, 309 A.2d at 862). The Trial Magistrate may then draw any reasonable inferences between the dispatched description of the suspect's vehicle and Officer DaSilva's testimony regarding his personal observations and interaction with Appellant. *See State v. Tweedie*, 444 A.2d 855, 858 (R.I. 1982) ("It is well settled that it is the duty of the factfinder to draw inferences.")

As this Panel cannot substitute its judgment for that of the Trial Magistrate "concerning the weight of the evidence on questions of fact," or any reasonable inferences drawn by the Trial Magistrate sitting as the factfinder, this Panel will not disturb the Trial Magistrate's decision. *Link*, 633 A.2d at 1348; *see also DeSimone Elec., Inc.*, 901 A.2d at 621. Accordingly, this Panel concludes that the Trial Magistrate's decision regarding the neighbor's letter, and the witness' report to the police, was not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record" or "a clearly unwarranted abuse of discretion." *See* § 31-41.1-8(f)(5)-(6).

C

Witness Identification

Furthermore, Appellant suggests that the Trial Magistrate erred by sustaining the violation, because the witness who reported the accident and pointed to Appellant's vehicle as Officer DaSilva drove by, did not identify Appellant as the driver of the vehicle that hit the sign. Rule 17 of the Rhode Island Traffic Tribunal Rules of Procedure states: "The burden of proof is

on the prosecution to a standard of clear and convincing evidence.” Traffic Trib. R. P. 17. Thus to sustain a charged violation of § 31-26-5, a trial judge or magistrate must find that there is clear and convincing evidence proving that a defendant was “[t]he driver of [a] vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway” and that the defendant failed to fulfill the duties outlined in § 31-26-5.²

The Rhode Island Supreme Court has held that “[t]he clear and convincing standard requires that the factfinder form ‘a clear conviction without hesitancy of the truth of the precise facts.’ *In re Emilee K.*, 153 A.3d 487, 497 (R.I. 2017) (*quoting In re Veronica T.*, 700 A.2d 1366, 1368 (R.I. 1997)). Moreover, our Supreme Court has stated that “[t]he testimony of a single witness, if believed, is sufficient to sustain a jury verdict in a criminal case and, thus, is certainly capable of supporting a finding of fact by clear and convincing evidence.” *Id.*; *see also State v. Rieger*, 763 A.2d 997, 1001 (R.I. 2001) (declaring that “a victim’s testimony alone is sufficient to sustain a conviction . . .”). “The factual findings of the trial justice concerning whether this clear and convincing evidence burden has been satisfied are entitled to great weight.” *In re Veronica T.*, 700 A.2d at 1368. “[S]uch findings generally will not be disturbed on

² Section 31-26-5 provides:

“The driver of any vehicle involved in an accident resulting only in damage to fixtures legally upon or adjacent to a highway shall take reasonable steps to locate and notify the owner or person in charge of the property of the fact and of his or her name and address and of the registration number of the vehicle the driver is driving. The driver shall upon request exhibit his or her operator's or chauffeur's license and shall immediately give notice of the accident to a nearby office of local or state police. In the event the office so notified does not have jurisdiction of the locale of the accident, it shall be the duty of the officer receiving the notice to immediately give notice of the accident to the office having jurisdiction.” Sec. 31-26-5.

appeal unless they are clearly wrong or unless the trial justice misconceived or overlooked material evidence.” *Id.*

The record in this matter reveals that Officer DaSilva’s testimony—regarding her observation of Appellant’s vehicle—provided sufficient evidence to identify Appellant as the motorist who struck the sign. (Tr. at 6-7.) Officer DaSilva testified that she observed “damage to the front bumper of [Appellant’s] vehicle [which] seemed to be fresh damage.” *Id.* at 7. Additionally, Officer DaSilva testified that “the vehicle behind [Appellant] point[ed] toward [Appellant’s] vehicle,” and that Appellant’s “vehicle matched a description called in by one of the witnesses.” *Id.*

After hearing the testimony, the Trial Magistrate stated that he found Officer DaSilva credible, and that he accepted her testimony as his findings of fact. *Id.* at 18. As a “trial justice may ‘draw inferences from the testimony of witnesses, and such inferences, if reasonable, are entitled on review to the same weight as other factual determinations,’” this Panel finds that there is legally competent evidence to support the Trial Magistrate’s findings. *DeSimone Elec., Inc. v. CMG, Inc.*, 901 A.2d 613, 621 (R.I. 2006) (quoting *Walton v. Baird*, 443 A.2d 963, 964 (R.I. 1981)). In relying on Officer DaSilva’s observations and Mr. Carroll’s testimony—that he saw Appellant hit the sign and reported the accident—the Trial Magistrate reasonably inferred that Appellant left the scene without fulfilling the duties established in § 31-26-5. Therefore, the Trial Magistrate’s decision was not “[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record.” Section 31-41.1-8(f)(5).

D

Weight of the Evidence

The Appellant further argues that the Trial Magistrate's decision is clearly erroneous as the Trial Magistrate improperly weighed the evidence by accepting the officer's testimony over Appellant's explanation of how her bumper was damaged, and without proof that the officer could identify Appellant as the driver of the vehicle. It is well-established that this Panel "lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact." *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). An appeals panel cannot review witness credibility as a trial magistrate may, since a trial magistrate "has had an opportunity to appraise witness demeanor and to take into account other realities that cannot be grasped from a reading of a cold record." *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (quoting *State v. Van Dongen*, 132 A.3d 1070, 1076 (R.I. 2016)). As this Panel did not observe live testimony, this Panel can neither assess the demeanor of a testifying witness, nor can it disturb the Trial Magistrate's findings of credibility. *A. Salvati Masonry Inc.*, 151 A.3d at 749 (quoting *Van Dongen*, 132 A.3d at 1076); *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). Accordingly, this Panel will not question the Trial Magistrate's assessment of the witnesses' veracity during trial.

The Trial Magistrate clearly determined that Officer DaSilva and Detective Trott testified credibly. (Tr. at 18.) After considering the officers' credible testimony, the Trial Magistrate sustained the charged violation. *Id.* As this Panel cannot substitute its judgment for that of the Trial Magistrate "concerning the weight of the evidence on questions of fact," or any reasonable inferences drawn by the Trial Magistrate sitting as the factfinder, this Panel will not disturb the

Trial Magistrate's determination. *Id.* Therefore, this Panel finds that the Trial Magistrate's decision was not "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." See § 31-41.1-8(f)(5).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was not "a clearly unwarranted abuse of discretion" or [c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(f)(5). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Magistrate Erika Kruse Weller (Chair)

Judge Lillian M. Almeida

Magistrate William T. Noonan

DATE: _____